



**UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office**

Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

BM

APPLICATION NO. 09/446,630	FILING DATE 02/23/00	FIRST NAMED INVENTOR AHU	ATTORNEY DOCKET NO. A TUR-087
-------------------------------	-------------------------	-----------------------------	----------------------------------

JAMES C LYDON
LYDON & BROWN
100 DAINGERFIELD ROAD
SUITE 100
ALEXANDRIA VA 22314

IM52/0914

EXAMINER

MICHL, P

ART UNIT	PAPER NUMBER
----------	--------------

1714

DATE MAILED: 09/14/01 *g*

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

09/446,630

Applicant(s)

Examiner

Michele

Group Art Unit

1714

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Response

A SHORTENED STATUTORY PERIOD FOR RESPONSE IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a response be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for response specified above is less than thirty (30) days, a response within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for response is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to respond within the set or extended period for response will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☒ Responsive to communication(s) filed on 8/31/01
- ☒ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1, 2, 4-16, 18, 19 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1, 2, 4-16, 18, 19 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☒ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
- ☐ received in Application No. (Series Code/Serial Number) _____
- ☒ received in this national stage application from the International Bureau (PCT Rule 1.7.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of References Cited, PTO-892
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Other _____

Office Action Summary

Art Unit 1714

Claims 1, 2, 4-16, 18 and 19 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Kretschmann. It remains the Examiner's position that composites of the required thermoplastic component having molecular weight 10,000 and bioactive ceramic would be obvious to one of ordinary skill in the art in Kretschmann. Applicants' arguments have been considered but are not persuasive. Kretschmann teaches the lower limit of 10,000. This teaching is sufficient to render applicants' claims unpatentable. The argument that Kretschmann fails to recognize beneficial properties is not persuasive. Since Kretschmann teaches 10,000, there is a presumption that whatever properties are possessed by applicants' composite at molecular weight 10,000 are also possessed by Kretschmann at molecular weight 10,000. If it is applicants' position that Kretschmann does not possess the required properties, then applicants had an opportunity to submit evidence in affidavit or declaration form to support their position. Applicants have not submitted any such affidavit or declaration. The argument that Kretschmann fails to teach or suggest the bioactive material is not persuasive. Kretschmann discloses bioactive ceramic in column 13, line 52. Applicants have not acknowledged this disclosure of Kretschmann.

THIS ACTION IS MADE FINAL. Applicants are reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a). The practice of automatically extending the shortened statutory

Serial No. 09/446,630

-3-

Art Unit 1714

period an additional month upon the filing of a timely first response to a final rejection has been discontinued by the Office. See 1021 TMOG 35.

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication should be directed to Paul Michl at telephone number (703) 308-2451.

The Examiner's supervisor is Vasu Jagannathan phone number (703) 306-2777. The fax number for this group is (703) 305-3599.

PRMichl:cdc

(703) 308-0661

September 12, 2001


PAUL R. MICHL
PATENT EXAMINER
ART UNIT 156